

**BDAC Assurances Work Group
Meeting Summary
April 24, 1997**

The BDAC Assurances Work Group held its seventh meeting on Thursday, April 24, 1997 at the Resources Building from 1:30-4:30 p.m.

BDAC Members of the Work Group present were:

Hap Dunning, Chair

Tib Belza

Rosemary Kamei

CALFED Staff/Consultants present were:

Mary Scoonover
Eugenia Laychak

Dave Fullerton

Michael Heaton

Invited Participants present were:

George Basye

Dennis O'Connor

Dan Sullivan

Others present included:

Rich Atwater
Jim Chatigny
Michael Gutterres
B.J. Miller
Randall Neudeck

Gary Bobker
Bill Dunn
Tom Hagler
John Mills
Stu Pyle

David Briggs
Amy Fowler
John Kopchik
Bill Nelson
Cliff Schulz

Work Group Chair Hap Dunning opened the meeting. Work Group members and other participants introduced themselves.

There were no additions or corrections to the March 11, 1997 meeting summary.

Cliff Schulz reported that a group of stakeholder representatives is meeting regularly to consider assurance issues in an attempt to develop the basis for a consensus approach to the assurances package. The group has produced a list of "functions" which details the specific powers, duties and authorities that the ecosystem restoration implementation entity will require. This is a step towards further consideration of which type of management entity will work best for the ecosystem restoration component.

The stakeholders group has also begun some preliminary consideration of the utility of a multi-species habitat management plan, such as a Habitat Conservation Plan (HCP) or similar instrument.

Mary Scoonover, staff for the Assurances Work Group, reported that the Assurances Workshop is scheduled for the afternoon of May 15, 1997. She explained the format of the workshop and described the materials which will be provided to workshop participants.

Mary also described three research projects related to assurance issues which CALFED hopes to undertake. The first is a review of other complex resource management programs such as those for the Chesapeake Bay, Everglades and Great Lakes.

Second is a review of HCPs and other agreements developed under the Endangered Species Act (ESA), such as those developed in Southern California and the Pacific Northwest.

The third project is a review of other water resources management agreements in California situations, which might have useful information on assurance tools applicable to the CALFED Program.

CALFED is attempting to get funding for the first project and would welcome support and assistance from stakeholders in carrying out the other projects.

Hap suggested that staff should also look at the Sierra Nevada Ecosystem Project reports for useful information.

Cliff Schulz reported that the CUWA/Ag Group will be reviewing and analyzing HCPs, primarily to look at the structure and organization of the plan. Randy Neudeck said that he has identified about 10 or 15 multi-species habitat conservation plans from around the country which they will review.

Mary reported that Fish and Wildlife Service (FWS) staff are also working on the idea of a programmatic HCP for the CALFED Program.

Tom Hagler reported on a two day meeting of the federal agencies involved in CALFED. Membership has expanded to include ten federal agencies, the new members being the Forest Service, Natural Resources Conservation Service, Bureau of Land Management, US Geologic Survey and the Army Corps of Engineers.

Tom informed the Work Group that the concept of a new agency or entity to be involved in the implementation of the CALFED Program was discussed. Generally, the reaction was negative; it is considered politically unrealistic and technically difficult to create a new agency. Tom believes that the view of the state agencies is similar. The agencies' position can be characterized as in favor of relying on existing agencies unless and until specific problems can be

identified which cannot be handled by the existing agencies. Similarly he anticipates a negative response to a proposal which would involve shifting any existing federal authority to another entity, public or private.

Tom also reported on the discussion among the federal agencies about the nature and level of assurances. Generally the view is that assurances will be commensurate with the level of Program detail. Tom doubts the federal agencies will support a proposal for federal legislation which includes "sufficiency language," meaning a provision which effectively exempts the CALFED Program from ESA. He also said this initial reaction of the agencies should not lead the stakeholders to decide that any particular assurance tool is "off the table."

Some discussion ensued in response to Tom's remarks. Rosemary Kamei asked for clarification about the federal agencies' view of the possibility of a new entity. Tom said that generally he thought the federal position would be opposed to the creation of a new entity with independent powers and authorities. However, the federal agencies may support an implementation approach that involves some adjustment to agency structure. Cliff Schulz expressed the concern that this might not be sufficient to address stakeholders' assurance concerns.

Mary then introduced the six assurance alternatives outlined in the paper distributed to the Work Group and other interested parties. (See paper titled *Draft Preliminary Assurance Alternatives*, dated April 15, 1997.) Mary noted that now that the Work Group has discussed and considered the array of management structures, the focus is shifting to the combination of other assurance tools which will go into an assurance package.

Mary reminded the group that the assurance alternatives are based on the Program content assumed for the case study, which is similar to Program Alternative 3(b).

Dave Fullerton and Mike Heaton summarized the six assurance alternatives and the group briefly discussed each. Some of the questions and issues which were raised are summarized below.

1. The funding mechanisms of Alternative 1 are not clear. How can bonds or bond authorizations be used to provide assurances?
2. In all alternatives, how can stakeholders be protected against the condemnation or emergency powers of the state?
3. How is the decision-making authority of the Joint Authority in Alternative 2 structured? What happens if there is a dispute among the member agencies of the JA? There was some discussion about having a set of default implementation rules which could only be changed by unanimous agreement of the JA member agencies. B.J. Miller suggested that potential disputes could be minimized by establishing very clearly at the outset what the JA can do, how it spends its money and how spending decisions are to be made.

4. How do the two JAs in Alternative 3 protect Delta water users and other water rights holders? Would there be any change to existing water rights enforcement mechanisms? This alternative includes some protection for local interests from impacts of water transfers, but does not propose to change the existing water rights system in any way.
5. The new ecosystem management entity in Alternative 4 will require some type of policy dispute resolution mechanism or process. (This is probably true of all alternatives.) The suggestion was made that there might be different voting rules for different types of issues to come before the new entity.
6. Roger Strelow asked if the new entity could be a state entity as opposed to a creation of state and federal law. Conceptually, it could be a state agency, but it appears that federal legislation will be required to integrate Central Valley Project Improvement Act (CVPIA) actions with the CALFED Program.
7. There was some discussion about the difference between an Operations JA and the status quo (CALFED Ops Group). The main difference is probably in the formality of the structure and that a JA would have independent legal existence and possibly authority.
8. Alex Hildebrand commented that the fundamental problem with the assurance alternatives is that any non-structural assurance will not be adequate to protect the interests of the Delta water users. Adequate assurances can only be provided by physical limits on the export facilities.
9. B.J. raised questions about the assurances of regulatory certainty for exporters. How will the exporters be assured if more water is needed in the future for environmental needs, that such water will be acquired without any further regulatory taking of exported water? Dave responded that this issue is fundamentally a question of who should assume the risk. Gary Bobker added that in his view, water users may be able to obtain some level of insulation from future regulatory impacts, but not absolute indemnity. The ecosystem program, to be successful, must have access to additional resources.
10. Tom Zuckerman added his observations that there are basically two effective assurance mechanisms for Delta interests. The first is the physical size of the export pumps. The second is the regulatory limits provided by the incidental take restrictions of the Biological Opinions for Winter Run and Delta Smelt.

The next Work Group meeting is scheduled for June 19, 1997, from 9:00 a.m. - 12:00 m.